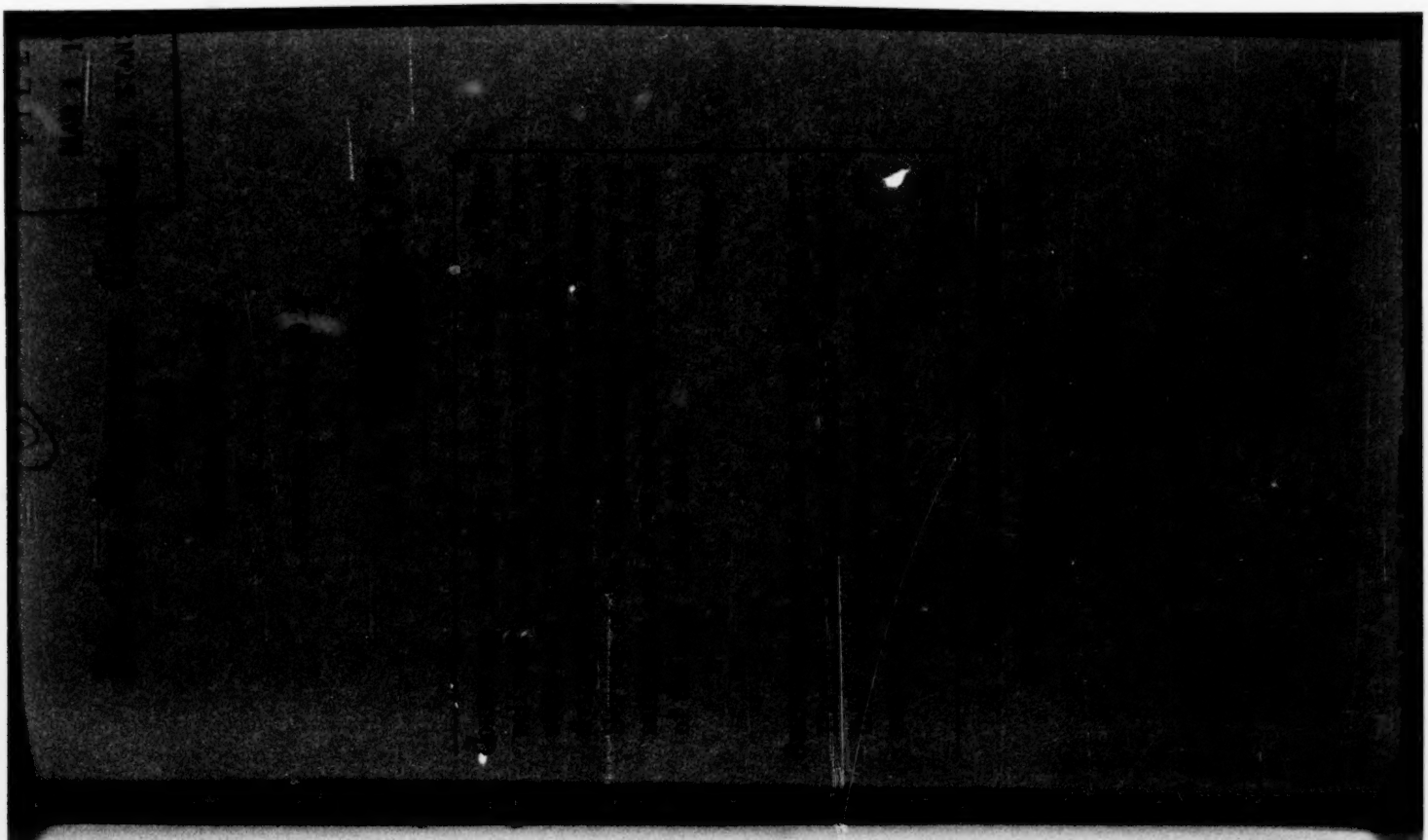

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In the Supreme Court
OF THE
United States

OCTOBER TERM, 1925

No.

CORNELIUS ANDERSON, suing on behalf of himself and all other seamen employed in Interstate and Foreign Commerce by sea on vessels flying the flag of and engaged in the Merchant Service of the United States of America and sailing to and from ports on the Pacific Coast of the said United States,

Petitioner,

vs.

SHIPOWNERS ASSOCIATION OF THE PACIFIC COAST, PACIFIC AMERICAN STEAMSHIP ASSOCIATION, their members, associates, agents and servants, JOHN DOE and RICHARD ROE,

Respondents.

PETITION FOR WRIT OF CERTIORARI
to the United States Circuit Court of Appeals
for the Ninth Circuit
After Hearing and Decision.

To the Honorable William Howard Taft, Chief Justice of the United States, and the Associate Justices of the Supreme Court of the United States:

Your petitioner, Cornelius Anderson, on behalf of himself and other seamen, respectfully petitions the Court for a writ of certiorari to be directed to the United States Circuit Court of Appeals for the Ninth Circuit. After hearing and decision in that Court, to review a decree given and made by the Southern Division of the District Court of the United States, for the Northern District of California, rendered August 27, 1925, granting a motion to dismiss petitioner's complaint, in which he sought injunctive relief against respondents herein, to restrain each thereof from violating certain provisions of the anti-trust and maritime laws of the United States, and from enforcing certain regulations of interstate and foreign commerce, that were without any sanction, as they had never been enacted by the Congress of the United States, the transcript on appeal in said cause having been filed in the said United States Circuit Court of Appeals, on the 12th day of September, 1925, and decided January 18th, 1926, becoming final February 18th, 1926.

SUMMARY OF STATEMENT.

Petitioner is a qualified American seaman, a sailor, and filed his complaint June 22, 1925, in which he alleged that respondents had combined together to

restrain the freedom of himself and all other American seamen from freely engaging in interstate and foreign commerce by sea on merchant vessels of the United States of America, sailing to and from ports on the Pacific Coast of the United States, the complaint showing that a monopoly of in excess of 300, about all, of the vessels engaged in such trade were, and that no one can get employment therein, or on such vessels without obeying the rules and regulations imposed by respondents, among which are the carrying of a continuous discharge book on which is printed:

"EMPLOYMENT SERVICE BUREAU,
Pacific American Steamship Association, Shipowners Ass'n. of the Pacific Coast,
San Francisco, California.

This certificate and discharge is issued under the authority of the Pacific American Steamship Association and the Shipowners Association of the Pacific Coast, and no person will be employed by these associations unless he is registered at their employment offices and has in his possession this Certificate and Discharge.

The lawful holder of this certificate will deliver it to the Master of the vessel when he signs Articles of Agreement, and the Master will retain the same in his possession until the seaman is discharged or has left the employment.

When the seaman severs his connection with the employment the Master will deliver this Certificate to the owner after he, or a person designated by him, has filled out in the proper columns the record of the seaman's service, and the reason of the discharge.

This certificate is the personal record of the seaman and is the basis of his future employ-

ment; the seaman is therefore advised to keep the same carefully and to conduct himself so that his record will be found satisfactory for future service.

If this certificate is lost or stolen a duplicate will be furnished upon the proper presentation at the Employment Service Bureau.

If this Certificate is found by any person the same should be returned to the Employment Service Bureau.

PACIFIC AMERICAN STEAMSHIP ASSOCIATION,
SHIPOWNERS ASSN OF THE PACIFIC COAST,
By W. J. PETERSON,
General Manager.

To MASTERS.

When a seaman joins your vessel, he will have this book and a card assigning him to your vessel; take up this book and retain it until the seaman is discharged or quits the vessel. When the seaman is discharged or quits the employment make out a report in this book of his rating, conduct and efficiency and return the book to him. If the seaman deserts write a reports of the facts in this book and return the same to the Employment Service Bureau.

To SEAMAN.

When you receive this book you will be given a registered number which will be placed in the back of this book. When you leave your ship you must report to the Employment Service Bureau and get a new registered number. The registration number is given you when you apply for a job and has nothing to do with the number printed on the book * * *."

The fee for the book is twenty-five cents, each seaman also being required to have written thereon the date and place of his birth, his age, his height, his

weight, the color of his hair and eyes, his complexion, his rating, the total of his sea experience, his previous employment, and his photograph is also required, but not insisted on.

That each seaman is required to take his turn for employment, according to number, which stifles the desire for improvement.

That the method of obtaining employment is: A seaman must first obtain the continuous discharge book, then register his name for an employment turn; he is then given a card to the ship upon which is printed among other things,

> "* * * *But he must not be employed on your ship in any capacity* unless he presents an Assignment Card, *grey in color,* issued by us" * * *.

The card, grey in color, reading in part:

> "To Captain of S. S. (name of steam vessel). Lying at (place where vessel is lying). In response to an order *we are assigning* (name of person assigned) in the capacity of" (capacity here inserted).

The said book is delivered by the seaman to the master, and upon the back thereof is a blank for a report as to the seaman's qualifications, with instructions to the master to fill out and return to respondents' office when the seaman is discharged or quits, but not to give it to the seaman.

That on the 15th day of June, 1925, plaintiff applied to respondents' office for registration for employment without a continuous discharge book and registration and was refused; that on the 18th of June, he ob-

tained employment as a sailor on a vessel engaged in the coasting trade between the states of California and Washington, and received a note from the mate of said vessel—it being alleged in the complaint, that the mates of said vessels are the executive officers, and work the men, and prior to the establishment of defendants' office always engaged the men—the note reading:

> "Please send bearer C. Anderson to S. S. 'Caddopeak'
>
> A. J. Rundberg
>
> Mate."

With instructions from said mate to take it to respondents' office for assignment, which plaintiff did, and was then refused assignment on the ground that he could not be employed on the "Caddopeak" at all; that they had too many men around their office now. That thereafter and on the same day plaintiff met said mate on a street and was told to report for work on board at 1 p. m., which he did, whereupon the port captain of the owner of the "Caddopeak", who had authority in the premises, told the mate to employ no one except through respondents' office, and plaintiff and another sailor at the same time lost their employment, plaintiff's damage being $135.00. The prayer of the complaint being that that be trebled and for an attorney's fee and costs.

It is also alleged that Congress has legislated upon all such matters and no seaman can get work without obeying such rules, and the enforcement of such rules has driven large numbers of the best seamen from their calling; that such rules destroy freedom of con-

tract, competition among the seamen, the right of a seaman to select his own ship, and the master of the ship to select the men he has to depend upon to do the work on the ship he commands and that seamen are entirely subservient to the will of respondents who neither employ or pay them, and that the said rules trench upon the exclusive right of Congress to legislate upon such matters.

All of which is the fact in practice and is necessarily admitted by the motion to dismiss.

The learned Circuit Court of Appeals held, (Tr. pp. 42, 46), that the amount involved was insufficient to give a United States Court jurisdiction. Although Section 7 of the Sherman Act reads, that such Courts have jurisdiction, "without respect to the amount in controversy", and also held (Tr. p. 45):

> "It is not alleged that the purpose of the practice complained of is the restraint of interstate or foreign commerce."

It is clearly so alleged (Par. VII of Complaint, Tr. p. 4; Par. XI of Complaint, Tr. p. 11). But such an allegation is unnecessary if all the facts of the complaint show such a restraint. And they do.

GENERAL REASONS RELIED ON FOR THE ISSUANCE OF THE WRIT.

We believe petitioner is entitled to a ruling from the highest Court in the land upon the several questions involved herein as several of such questions are both legally and economically fundamental, and there-

fore public. No one will dispute that society demands that every one within it shall provide himself with necessities and not become a charge upon it. We contend, therefore, the utmost freedom in so doing should be allowed and that it is the duty of society to protect each person within it in obeying that demand and prevent any person from being required to do more than the law requires him to do in his efforts in obeying its mandates. The law is plain as to what a seaman shall do in obtaining necessities while following his calling. We do not believe that any combination of persons have the right to supplement what the law provides, no matter what one person may do of himself, nor do we believe that any combination of persons have the right in interstate and/or foreign commerce to create a monopoly and surrender the control of their business to a central body, but that it is their duty to compete in all things, and we believe it is fundamentally wrong to force any person to obey the commands of a central body that neither employs or pays him, or that destroys his freedom of contract to select his own employer and place of employment, or to serve under agents of an employer selected for him by someone else whether he wishes to or not, as the rules of respondent do. We believe it is equally fundamentally wrong to force the agents, viz., the officers of a vessel, to take seamen that they have to command and carry out their duties with whether they wish to or not, and thus destroy the right of selection of the agencies with which their own duties are to be performed. In other words, in all callings, particularly a calling as hazardous as

that of the sea, the men who do the work should have the right to say who shall command them and who they will sail with, and the officers of vessels, all licensed and whose licenses and consequently livelihood are always at stake, together with the lives of all, should have the right of selecting their own men and say who shall work under them. All of which is prevented by respondents' rules, as appears by the assignment card, Tr. p. 8, which reads in part: "We are assigning", Tr. p. 10, addressed to the master of the vessel, "Mr..... is assigned to (department) as..... But he must not be employed etc." * * * "to which *we* have assigned him". And we further believe that open competition in obtaining employment should be present in all callings, which is utterly destroyed by respondents' system of taking turns for employment. We further believe that all of respondents' rules cannot fail to be prejudicial to the business concerned and therefore the general public. Being fundamentally wrong the foregoing matters must be legally wrong, and the Constitution places the whole matter with Congress as we will hereafter show.

As to the decision of the learned Circuit Court of Appeals herein, we submit it is legally wrong on the questions on which it passed as follows:

The learned Circuit Court of Appeals decided that the amount of $135.00 was not sufficient to vest a Federal Court with jurisdiction, it saying, Tr. p. 46:

> "If plaintiff has a cause of action it is not cognizable in the federal courts."

It will be observed that it does not dispute that there is a cause of action, but decided the case on lack of jurisdictional amount. The law is as follows, in addition to the sections quoted in the opinion, Tr. pp. 44, 45.

Section 7 of the Sherman Act, 26 Stat. 210:

> "Any person who shall be injured in his business or property by any other person or corporation by reason of anything forbidden or declared to be unlawful by this act, may sue in any circuit court of the United States in the district in which the defendant resides or is found, *without respect to the amount of controversy*, and shall recover three fold the damages by him sustained, and the cost of suit, including a reasonable attorney's fee."

After quoting paragraphs 8 and 23 of Section 24 of the Judicial Code, on Tr. p. 44, and also Section 16 of the Clayton Act, each of which paragraphs of Section 24 are within the following language of said Section 24:

> "*Provided, however,* That the foregoing provision as to the sum or value of the matter in controversy shall not be construed to apply to any of the cases mentioned in the succeeding paragraphs of this section."

The learned Circuit Court of Appeals says, Tr. p. 45:

> "It is not alleged that the purpose of the practice complained of is the restraint of interstate or foreign commerce."

That of course would not be necessary, if the facts pleaded show it, and they do, and this Court held in

Grand Trunk Ry. Co. v. Lindsay, 233 U. S. 42, 48,

that a similar contention was unsound, and had been foreclosed by

Seaboard Airline Ry. Co. v. Duval, 225 U. S. 477, 478.

It is elementary that all the pleader has to do is to plead the facts, and the court is presumed to know whether such facts are covered by any law, and the above learned Circuit Court of Appeals so held on October 19, 1925, in

Luckenbach S. S. Co. v. Campbell, 3 Fed. (2nd Ser.) 223, 224,

saying:

> "There seems to be some contention that no reference was made in the libel to any statute, but this is wholly unnecessary. The pleader must plead his facts, and, when he does so, he may invoke the protection of the common law, or of any applicable statute."

The complaint herein, however, does allege the purpose, contrary to what the learned Circuit Court of Appeals found. See Paragraph VII, Tr. pp. 4 and 5 and Paragraph XI, Tr. p. 11. Plaintiff also prays for treble damages and a reasonable attorney's fee. (Tr. p. 17.)

Paragraph XVIII, Tr. p. 16, alleges that the vessels controlled by defendants are engaged in different trades, and some men are better suited for one trade than another, and that the officers of such vessels are deprived of the opportunity of selecting their own men and those most suitable for the trade they are engaged in, and that defendants supply all of the men on the 300 or more vessels they control, and it is al-

leged in paragraph XVI that prior to the advent of defendants mates always did that, as they were the executive officers and worked such men.

We submit that that is all a matter of public importance.

This Court held in

Missouri Pacific Railway Co. v. Stroud, 267 N. Y. 404, 408:

> "It is elementary and well settled that there can be no divided authority over interstate commerce, and that the acts of Congress on that subject are supreme and exclusive."

Congress has provided a complete scheme for the supplying, shipment and discharge of seamen, as will hereafter appear. The learned Circuit Court of Appeals, however, says in effect (Tr. p. 46) that if the contract is entered into before the shipping commissioner, that is all that is necessary.

The purpose of the laws on the subject is, as this Court said in

Patterson v. Bark Eudora, 190 U. S. 168:

> "Contracts with sailors for their services are, as we have seen, exceptional in their character, and may be subjected to special restrictions for the purpose of securing the full and safe carrying on of commerce on the water.
>
> Being so subject, whenever the contract is for employment in commerce not wholly within the State, legislation enforcing such restrictions comes within the domain of Congress, which is charged with the duty of *protecting foreign and interstate commerce.*"

Congress has legislated as follows (Sec. 4508, Revised Statutes):

> "The general duties of a shipping commissioner shall be:
>
> First. To afford facilities for engaging seamen by keeping a register of their names and characters."

Respondents divide that duty with Congress. Their rules say (Tr. p. 6):

> "and no person will be employed by these associations unless he is registered at their offices and has in his possession this certificate and discharge."

It must be conclusively presumed that Congress thought that the previous registration before the Shipping Commissioner was just as important as the final execution of the contract, and that it was necessary to

> "the full and safe carrying on of commerce on the water".

And that the certificate of discharge in the form provided by law and its issuance by the Shipping Commissioner was just as indispensable.

It has provided for such discharge in Section 4551 of the Revised Statutes, and the form of the discharge is given in Section 4612 and Section 4508 says in the second paragraph:

> "Second. To superintend their engagement and discharge, in the manner prescribed by law."

The learned Circuit Court of Appeals, though, says that the engagement before the Commissioner is all that is necessary. Congress has prescribed the form of discharge. Respondents, however, say (Tr. p. 6):

"This certificate and discharge is issued under the *authority* of the Pacific American Steamship Association and the Shipowners Association of the Pacific Coast."

If that is not a division of authority, it is impossible to conceive what would be.

Congress has legislated, as above, in paragraph first, that the Shipping Commissioner shall afford facilities for engaging seamen by keeping a register of their names and characters".

Respondents keep a register of the names and characters also and their register and form is found on Tr. pp. 8 and 9. The seaman is not permitted to see that, hence it affords a perfect system for blacklisting, and petitioner has been blacklisted herein by being denied employment without respondents' discharge book. That is in conflict with legislation by Congress.

All of those things are a restraint on a man's right to earn the living society commands him to earn, and are also necessarily a restraint on the right to freely engage in interstate and foreign commerce, and as the restraint applies to the whole of the seamen, the restraint affects the whole of the commerce affected.

Congress intended the provisions relating to the supplying of seamen which precedes the signing of the contract to be exclusive, and have in effect said so in the following sections of the Revised Statutes:

In Section 4507 it requires the Secretary of Commerce to provide an office for the Shipping Commissioner.

In Section 4515 it has provided that if any seaman shall be received, accepted or be carried to sea engaged *or supplied* contrary to the provisions of this title, the vessel should be liable to a penalty of not more than two hundred dollars.

All of the rules of respondents are contrary to the provisions of the title above referred to.

The learned Circuit Court of Appeals, however, says that they are not, on Tr. p. 46, and is further in error in stating as it does that Section 4551 "is preliminary to the execution of the form of the contract". That section relates entirely to the discharge of the seaman, after the service is performed.

Petitioner and those on whose behalf he sues are interfered with in their right to engage in interstate and foreign commerce. Respondents have a monopoly, and do not deny it. They *supply* all of the seamen, and there can be no question this case is within the terms of both the Sherman and Clayton Acts, and respondents' combination is within the language of *Hilton v. Eckersley*, cited and quoted from in our brief attached hereto, in which it was held that a combination of employers such as this are "restraints of trade not capable of enforcement".

If such a combination was a restrain at common law, it is clearly a restraint under the Sherman and Clayton Acts, which are but statutory enactments applicable to interstate and foreign commerce of what the common law was. And any act that requires a person to do more than the law requires must be a restraint upon the subject it operates on.

If a state passed laws in the same terms as respondents rule, they would be held unconstitutional, and this Court held in

Loewe v. Lawlor, 208 U. S. 303, 304:

> "If a state, with its recognized powers of sovereignty, is impotent to obstruct interstate commerce, can it be that any mere voluntary association of individuals within the limits of that state has a power which the state itself does not possess."

And it has been held over and over again that the above Sherman and Clayton Acts, apply to all classes, the last expression of opinion that we can find being that of

Candell et al. v. U. S., 6 Fed. 2nd Ser.) 188,

in which members of a labor union were indicted, and the Court held specifically that the Sherman Act applied to all classes, and this Court has so held repeatedly.

In the *Tillbury* case, cited in opinion herein, there was no question of any statutes being violated, and in the *Street* case, 299 Fed. 5, both decisions being by the same Court, the Court held that:

> "There is no allegation in the complaint that plaintiff has ever applied for employment and been refused, and no allegation that plaintiff has ever suffered or will suffer loss or damage by reason of the regulations or acts of the defendants."

That has all been supplied in the complaint herein. The Court also found in that case that there was no allegation of discrimination. The complaint herein shows that respondent was discriminated against be-

cause he had no discharge book, and lost a property right in his employment by reason of that fact.

The Court in that (*Street*) case also cited the case of *McCabe v. Atchison, Topeka & Santa Fe Ry. Co.,* 235 U. S. 152, 162. The gist of that opinion is, that McCabe had never been injured and might never be, this Court saying:

> "The complainant must present facts sufficient to show that his individual need required the remedy for which he asks."

This complaint does show that respondent has individual needs.

We respectfully submit, that it is optional with any person whether he waits his turn at a theater or post office or not, and there is always another he can go to, that bread lines are very infrequent, and there is no room for the analogy made of such matters with the compulsory matter of awaiting turns to earn a livelihood as made in the *Street* case, and that this Court simply held in that case that the Constitutional questions involved were not sufficient to vest this Court with jurisdiction on a direct appeal, as the law was at that time.

And we respectfully submit that anything that interferes with any person's freedom to engage directly or create a monopoly in interstate and foreign commerce affairs, is a restraint upon such commerce, the interference and monopoly is direct in this case. Manufacture or mining is not interstate commerce of itself, and that is all this Court has ever held. When the products begin to move in such commerce, it be-

comes interstate or foreign commerce but not until then. What occurs in this case is interference with the whole of one of the instrumentalities of commerce, without which instrumentality no vessel can be moved, it is thus clearly direct.

We respectfully submit, that the decision herein is against all the law on the question of jurisdiction, that the questions are of public importance, that the complaint shows a violation of both the Sherman and Clayton Acts, that the petitioner being as an alien had the right in this case to appeal to the federal courts, without respect to the amount in controversy, and we respectfully refer to our brief attached hereto and pray that a writ of certiorari be granted.

Dated, San Francisco,
February 18, 1926.

H. W. HUTTON,
Attorney for Petitioner.

BRIEF IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI to the United States Circuit Court of Appeals for the Ninth Circuit.

The contentions of the petitioner are as follows:

(a) The whole of commerce by sea is restrained.

(b) Petitioner as an alien can maintain this action.

(c) The combination of the respondents herein is a monopoly.

(d) Such monopoly is being used to enforce the above mentioned rules and regulations.

(e) Petitioner's right to a free market for his labor is interfered with by the defendants.

(f) Petitioner was entitled to injunctive relief.

(g) The rules and regulations are regulations of commerce, which only the Congress of the United States has the power to make.

(a)

THE WHOLE OF COMMERCE BY SEA IS RESTRAINED.

This Court held in the case of

The Passenger cases, 7 Howard 232, 407:

> "The officers and crew of the vessel are as much the instruments of commerce as the ship," * * *

All carriage commerce is effected through the men, the animate, and the vessels or cars, the inanimate parts; if the whole of one, the animate part, is re-

strained or impeded, it would seem that the whole of commerce is restrained or impeded just as much as if the vessels, the whole of the inanimate part was restrained or impeded, as an interference with the whole of one of the essential parts, is necessarily an interference with the whole scheme.

And if the taking of turns, or equality of opportunity puts the man possessed of superior qualifications on the same plane as one of inferior qualifications, as it does, then there is no incentive to possess superior qualifications, or advance in the calling, and the whole economic scheme is bound to retrogress in skill and ability. Competition is essential to advancement, and advancement in skill and ability is peculiarly necessary in ocean commerce as the safety of life and property at sea depend upon it, and the destruction of the freedom of contract of one part of commerce is an interference with the whole thereof.

(b)

PETITIONER AS AN ALIEN CAN MAINTAIN THIS ACTION.

Plaintiff alleges (Tr. p. 2) that he declared his intentions to become a citizen of the United States more than four years ago, and has been employed for more than twenty years as a seaman, sailor, on American vessels, and Section Eighth of the Naturalization Act of June 29th, 1906, as frequently amended now reads in part:

> "Eighth. That every seaman, being an alien shall, after his declaration of intention to become

a citizen of the United States, and after he shall have served three years upon such merchant or fishing vessels of the United States, be deemed a citizen of the United States for the purpose of serving on board any such merchant or fishing vessel of the United States, anything to the contrary in any act of Congress notwithstanding; but such seaman shall, for all purposes of protection as an American citizen, be deemed such after filing his declaration of intention to become such citizen; * * *"

The anti-trust laws also apply to aliens.

(c)

THE COMBINATION OF THE RESPONDENTS HEREIN IS A MONOPOLY.

The allegations of the complaint show that every vessel flying the American Flag, and plying to and from ports on the Pacific Coast and engaged in interstate and foreign commerce is operated by respondents or their members. That shows without peradventure of a doubt, that respondents' combination is a monopoly.

(d)

SUCH MONOPOLY IS BEING USED TO ENFORCE THE ABOVE MENTIONED RULES AND REGULATIONS.

The complaint shows that.

(e)

PETITIONER'S RIGHT TO A FREE MARKET FOR HIS LABOR IS INTERFERED WITH BY THE RESPONDENTS.

Every person has a right to a free market for his labor.

Hundley v. Louisville & Nashville R. Co., 105 Ky. 164-165.

> "Every person *sui juris* is entitled to pursue any lawful occupation, or calling. It is a part of his civil rights to do so. He is as much entitled to pursue his trade, occupation, or calling and be protected in it as is the citizen in his life, liberty and property."

We concede that respondents and each of its members have an equal right with petitioner. No one of respondents or their members could be compelled without these rules to hire or employ any person. The rules compel them to, however. No one of respondents could be compelled in the absence of such rules to hire Cornelius Anderson, the petitioner, but no one of the respondents or their members have any right to have anything to say about how or in what manner said Anderson should be employed by any other respondent or any other member. When they do so, as they do herein, petitioner's rights are invaded, and he has a cause of action.

This Court said in

Eastern States Lumber Ass'n. v. U. S., 234 U. S. 600,

> "An act harmless when done by one may become a public wrong when done by many acting in concert, for *it then takes on the form of con-*

> *spiracy* and may be prohibited or punished, if the result be hurtful to the public *or to the individual against whom the concerted action be directed.*"

In this case appellees have combined together in the matter of hiring their men, necessarily one member of appellees surrenders his right to select a particular man, and surrenders his will in all the matters relating to the hiring of seamen to the will of the majority. *That has uniformly been held to be against public policy,* as, if permitted, it would only be a question of time when such combination would be able to promulgate rules that would reduce workingmen to a condition of peonage.

A similar matter came up in the case of *Hilton v. Eckersley*, 6 Ellis & Blackburn 47, in which case all of the master cotton spinners in Wigan, County of Lancaster, combined together and each executed a bond, a part of the conditions of which were as follows:

> "and therefore the said several obligors have agreed to carry on their said works, in regard to the amount of wages to be paid to persons employed therein, and the times or periods of the engagement of work people, and the hours of work, and the suspending of work, and the general discipline and management of their said works and establishment in conformity to law."

One of the combination violated the agreement and upon being sued on the bond pleaded that there was no consideration for the execution of the bond and that the bond was in restraint of trade, illegal and void.

The case first came up in the Court of Queen's Bench, where the bond was held illegal and against public policy. It then went to the Exchequer Chamber, where the judgment was affirmed, Lord Alderson saying on page 74:

> "Secondly, they can only employ persons for such times and periods as the majority may fix on, however much the minority may deem it for their own interest to do otherwise. The hours of work, the suspending of work, partially or altogether, the discipline and management of their establishments, is to be regulated by others forming a majority, and taken from every individual member. And all this for a fixed period of twelve months. All these are surely regulations restraining each man's power of carrying on his trade according to his discretion, for his own best advantage, and therefore are restraints of trade not capable of being enforced."

Any man who can not earn a living at his calling except by obeying rules and regulations of an illegal body, is deprived of his property right to earn a living without due process of law.

Curran v. Galen, 152 New York 33, 37.

> "Public policy and the interests of society favor the utmost freedom in the citizen to pursue his lawful trade or calling, and if the purpose of an organization or combination of workingmen be to hamper, or to restrict, that freedom, and *through contracts or arrangements with employers* to coerce other workingmen to become members of the organization and to come under its rules and conditions, under the penalty of the loss of their position, and of deprivation of employment, then that purpose seems clearly unlawful and militates against the spirit of our government and the nature of our institutions. The effectuation of

such a purpose would conflict with the principles of public policy, which prohibits monopolies and exclusive privileges. *It would tend to deprive the public of the services of men in useful employments and capacities.* It would, to use the language of Mr. Justice Barrett in People ex rel. Gill v. Smith (5 N. Y. Cr. Rep. at p. 513), *'impoverish and crush a citizen for no reason connected in the slightest degree with the advancement of wages, or the maintenance of the rate.'*

Every citizen is deeply interested in the strict maintenance of *the constitutional right freely to pursue a lawful avocation* under conditions equal to all, and to enjoy the fruits of his labor, *without the imposition of any conditions not required for the general welfare of the community.''*

Plant v. Wood, 176 Mass. 492-498.

"Everyone has a right to enjoy the fruits and advantages of his own enterprise, industry, skill and credit. He has no right to be protected against competition; *but he has a right to be free from malicious and wanton interference, disturbance or annoyance.* If disturbance or loss * * * come from the merely wanton or malicious acts of others, without the justification of competition or the service of any interest or lawful purpose, it then stands on a different footing."

There is no difference in principle between this case and that of *The Mogul Steamship Company, Limited, v. McGregor et al.,* 23 Queen's Bench (1889) 598.

In that case several steamship companies had combined together to control the carrying trade of tea from Hankow and Shanghai to England. The Mogul Steamship Company was refused admittance into the agreement, and thereupon sent two steamers to Hankow in order to obtain freights independently; thereupon the combination lowered freight rates to such a

figure that it was impossible to carry at a profit, for the purpose of forcing plaintiff out of that business. The question of the right of plaintiff in that case to use their steamers in business was the question involved, and the learned Court, speaking through the very able and distinguished Lord Esher, says as follows:

Page 603.

> "It seems to me well to consider first what view the law takes of the agreement of April 7, 1884, renewed or enlarged in 1885. In Hilton v. Eckersley (4) a bond was executed by certain masters, by which they agreed to be bound to each other in a penalty, nominally payable to one of them, if any of them should carry on his works, in regard to amount of wages to be paid to persons employed therein, and as to the times or periods of the engagement of workpeople and the hours of work otherwise than in conformity with the resolutions of the majority of the said masters. The defendant, one of the signing masters, carried on his works contrary to a resolution of the others, whereupon he was sued on the bond for the penalty. Crompton, J., said: 'I am of the opinion that the bond is void, as being against public policy. I think that combinations like that disclosed in the pleadings in this case were illegal and indictable at common law, as tending directly to impede with the free course of trade and manufacture'."

The combination of defendants in this case is squarely within what was there declared was against public policy. In the Court of Exchequer Chamber, Lord Alderson said, quoted on the above mentioned page of 23 Queen's Bench Division,

> "that the fact of the combination of masters being formed to counteract a combination of workmen cannot render the master's combination legal."

Page 605.

> "But before considering that point it must be observed that the agreements held to be illegal because in restraint of trade must have been so held, not because there was any wrong done to the traders who agreed,—for they all agreed to what was done—but because there was a wrong to the public. The restraining themselves from a free course of trade was held to be wrong to the public. If that be so when parties agreed to restrain themselves, it must be much more so when they agree to do acts which will restrain and are intended to restrain another trader from a free course of trade. That restraint is equally a wrong to the public. The present agreement is therefore illegal and void as in restraint of trade on that ground also."

In the case at bar, the combination of the different employers means that no one shall have the right to select his own employees; he must take them by the numbers as the men apply; there is a restraint on the employer in this case and necessarily a restraint upon the employee. On page 607, 22 Queen's Bench (1889), Lord Esher further proceeds:

> "At common law," says Sir W. Erle (page 6), "every person has individually, and the public also have collectively, a right to require that the course of trade should be kept free from unreasonable obstruction." "Every person has a right under the law, as between him and his fellow-subjects *to full freedom in disposing of his own labour* or his own capital *according to his own will*. It follows that every other person is subject to the correlative duty arising therefrom, and is prohibited from any obstruction to the fullest exercise of this right which can be made compatible with the exercise of similar rights by others. Every act causing an obstruction to another in the exercise of the right comprised within this description—done, not in the exercise of the

> actor's own right, but for the purpose of obstruction—could, if damage should be caused thereby to the party obstructed, be a violation of this prohibition; and the violation of this prohibition by a single person is a wrong, to be remedied either by action or indictment, as the case may be. It is equally a wrong whether it be done by one or many—subject to this observation, that a combination of many to do a wrong, in a matter where the public has an interest, is a substantive offense of conspiracy."

The appeal was not allowed in that case, but the principles announced in Lord Esher's opinion are unquestionably the law as the following will show.

Erdman v. Mitchell, 207 Pa. St. 79,

> "The right to the free use of his hands is the workman's property, as much as the rich man's right to the undisturbed income from his factory, houses and lands. By his work he earns present subsistence for himself and family. His savings may result in accumulations which will make him as rich in houses and lands as his employer. This right of acquiring property is an inherent indefeasible right of the workman. To exercise it, he must have the unrestricted privilege of working for such employer as he chooses, at such wages as he chooses to accept. This is one of the rights guaranteed him by our Declaration of Rights. It is a right of which the legislature cannot deprive him, one which the law of no trades union can take away from him, and one which it is the bounden duty of the courts to protect."

Berry v. Donovan, 188 Mass. 353, 355-366,

> "The right to dispose of one's labor as he will, and to have the benefit of one's lawful contract, is incident to the freedom of the individual, which lies at the foundation of the government in all countries that maintain the principles of civil liberty. Such a right can be lawfully interfered

with only by one acting in the exercise of an equal or superior right which comes in conflict with the other. An interference with such a right, without lawful justification, is malicious at law even if it is from good motives and without express malice.'

Jones v. Leslie, 61 Wash. 107, 110,

"It would be well to remember, in the beginning, that it is fundamental that a man has a right to be protected in his property. This was the doctrine of the common law; is, and always has been, the law in every civilized nation. It is, of necessity, one of the fundamental principles of government, the protection of property being largely one of the objects of government. For the protection of life, liberty, and property, men have yielded up their natural rights and established governments. Is, then, the right of employment in a laboring man property? That it is, we think cannot be questioned. The property of the capitalist is his gold and silver, his bonds, credit, etc., for in these he makes his living. For the same reason, the property of the merchant is his goods. And every man's trade or profession is his property, because it is his means of livelihood; because, through its agency he maintains himself and family, and is enabled to add his share towards the expenses of maintaining the government. Can it be said, with any degree of sense or justice, that the property which a man has in his labor, which is the foundation of all property and which is the only capital of so large a majority of the citizens of our country, is not property; or, at least, not that character of property which can demand the boon of protection from the government? We think not. To destroy this property, or to prevent one from contracting or exchanging it for the necessities of life, is not only an invasion on a private right, but is an injury to the public, for it tends to pauperism and crime. This relief has been granted to employers in many forms."

That is a case where an employee sued a former employer.

People v. McFarlin, 89 N. Y. Supp. 527,

"A calling, business or profession chosen to follow is property."

State v. Chapman, 55 Atlantic 94,

"Labor is property and as such merits protection. The right to make it available is next in importance to the right to life and liberty."

Slaughter House Cases, 16 Wallace 36, 127,

"The right to operate vessels and to conduct business is as much property as are the vessels themselves. All the rights which are incident to the use, enjoyment, and disposition of tangible things are property. Property is everything that has an interchangeable value." Mr. Justice Swayne in the Slaughterhouse Cases, 16 Wall. 127, L. Ed. 894, "Property may be destroyed, or its value eliminated. It is owned and kept for some useful purpose, and it has no value unless it can be used. In re Jacobs, 98 N. Y. 105."

Sailors Union of the Pacific v. Hammond Lumber Co., 156 Fed. 454;

Gleason v. Thaw, (C. C. A. 3rd Cir.) 185 Fed. 345, 347,

"Thus—man's right to labor, to carry on a lawful business, or to practice a lawful profession, may not be taken away from him *or be restricted* by any act of the state not within its police powers, *such act being considered as a deprivation of property within the constitutional inhibition, federal or state.* Such combination or conspiracy to destroy or prevent the carrying on of the business of any person within the protection of law *may be enjoined as a threatened trespass upon a property right. * * * The right to labor in any calling or profession in the future*

may be considered a property right, for the purpose of protection, * * *. We must not allow ourselves, by a subtle verbal casuistry, to confuse a concept of the right to work or render service with the service itself when it has been rendered. *The right to render labor or service is one thing; the service itself quite a different thing.* * * *"

In

Ritchie v. People, 155 Ill. 98, 40 N. E. 454, 29 L. R. A. 79, 46 Am. St. Rep. 315,

"the court held a statute of the state prohibiting the employment of females in any factory for more than eight hours a day unconstitutional, on the ground that the right to labor and employ labor is a property right, of which the citizen cannot be deprived without due process of law."

The same was said in

Gillespie v. People, 188 Ill. 176, 58 N. E. 1007, 52 L. R. A. 283, 80 Am. St. Rep. 176:

"There a law making it criminal for an employer to attempt to prevent his employees from joining labor unions, or to discharge them because of their connection with labor unions, was held unconstitutional, as being in contravention of the guaranty that no person shall be deprived of life, liberty or property without due process of law."

In this case we have a combination that imposes rules that are oppressive and calculated to and do restrain the freedom of the employee, just as the state statute restrains the freedom of the employer in the cases above cited; in those cases it was a statute, but we will show later on, that what a state cannot do an individual or combination of individuals cannot.

(f)

PETITIONER WAS ENTITLED TO INJUNCTIVE RELIEF.

Petitioner has a right to engage in interstate and foreign commerce solely under the provisions of the Shipping Commissioners Act, and petitioner having a property right in his right to labor, an unauthorized restriction thereon is a taking of his property without due process of law, he being engaged in interstate and foreign commerce, his rights are given by Section 16 of the Act of October 15, 1914, which reads:

> "That any *person*, firm, corporation, *or association* shall be entitled to sue for and have injunctive relief, in any court of the United States having jurisdiction over the parties, *against threatened* loss or damage by a violation of the anti-trust laws. * * *"

The amount of the loss is immaterial under that language, Clause Fifth of Section 24 of the Judiciary Act.

Gable v. Vobbegut Shoe Mach. Co., 274 Fed. 66 (syllabus):

> "Though under the Clayton Act, Sec. 16, 19 Comp. Statutes, etc., a private party may maintain a suit to enjoin acts interfering with interstate commerce, the requirement being that the acts complained of must be immediately directed against interstate commerce."

Duplex v. Deering, 254 U. S. 443, 464,

> "The Clayton Act, in Sec. 1 includes the Sherman Act in a definition of anti-trust laws and in Sec. 16 (38 Stat. 738) *gives to private parties a right to relief by injunction in any court of the United States against threatened loss or damage by a violation of the anti-trust laws* under the

conditions and principles regulating the granting of such relief by courts of equity."

Atkins v. W. A. Fletcher Co., 65 N. J. Eq. 658, 666,

"What a court of equity will protect by an injunction in a proper case are the rights of the two parties dually interested in the conflict W. A. Fletcher Company and their employes—the right of one to employ *and the right of the other to be employed; the right of both to have a free labor market where an opportunity to make a living depends.*"

Labatt on Master & Servant, 2nd Edition, Section 2691,

"An injunction may be granted against threatened interference by unlawful means with one's existing employment, *or against the commission of acts tending unlawfully to interfere with the obtaining of employment by complainant*, where there is reason to believe that continued interference is contemplated."

(g)

THE RULES AND REGULATIONS ARE REGULATIONS OF COMMERCE, WHICH ONLY THE CONGRESS HAS THE POWER TO MAKE.

Respondents are common carriers, and it is their duty to compete in all matters relating to the business. A man has as much right to go to sea in interstate and foreign commerce as another has to run a ship therein—one cannot engage in such business without the other. This Court said in

The Lottawanan, 21 Wallace 558, 578:

> "The scope of the maritime law, and that of commercial regulation are not coterminous, it is true, but the latter embraces much the largest part of ground covered by the former. Under it Congress has regulated the registry, enrollment, license, and nationality of ships and vessels; the method of recording bills of sale and mortgages thereon; *the rights and duties of seamen;* the limitations of the responsibility of shipowners for the negligence and misconduct of their captains and crews; and many other things of a character truly maritime * * *. Ships or vessels of the United States are creatures of the legislation of Congress. * * *"

Page 573:

> "Congress having created, as it were, this species of property and conferred upon it its chief value under the power given in the constitution to regulate commerce, we perceive no reason for entertaining any serious doubt but that this power may be extended to the security and protection of the rights and titles of all persons dealing therein."

The rights and duties of seamen are a matter for Congressional legislation alone, it has the exclusive power to pass regulations of interstate and foreign commerce. The powers given to Congress are found in Section 8 of Art. 1 of the Constitution. Clause 3 of that section reads:

> "To regulate commerce with foreign nations, and among the several states, and with the Indian tribes."

It has been uniformly held that that power is exclusive, Congress has the right to legislate on matters relating to seamen.

The Troop, 117 Fed. 557;
Kenney v. Blake, 125 Id. 672,

and has done so in the matters involved herein in the Shipping Commissioners' Act, with its various amendments, that act was taken almost verbatim from the British Merchant Shipping Act, in which the duties of a Shipping Master are given to the Shipping Commissioner, and the law is as follows:

When first passed the matter of regulating the shipment and discharge of merchant seamen was vested in the Circuit Courts of the United States. Its judges appointed the Shipping Commissioner, and Section 4501 of the Revised Statutes then read:

> "Such courts shall regulate the mode of conducting business in the shipping office to be established by the shipping commissioners as hereinafter provided; and shall have full and complete control over the same, subject to the provisions herein contained."

The matter was taken out of the hands of the Circuit Court in 1884 and given to the Secretary of the Treasury, then went from him to the Secretary of Commerce and Labor and from him to the Secretary of Commerce where it now is.

Section 4507 of the Revised Statutes now reads:

> "The Secretary of Commerce shall assign in public buildings or otherwise procure suitable offices and rooms for the *shipment and discharge of seamen*, to be known as the Shipping Commissioners office, and shall procure furniture, stationery, printing and other requisites for the transaction of the business of such office."

The following sections show that defendants are doing the very thing Congress says the Shipping Commissioner shall do, to-wit:

They have established an office for the supplying of seamen and there do what is provided for as follows; Section 4508 Revised Statutes reads:

> "The general duties of a shipping commissioner shall be:
>
> First. To afford facilities for engaging seamen by keeping a register of their names and characters.
>
> Second. To superintend their engagement and discharge, in manner prescribed by law.
>
> Third. To provide means for securing the presence on board at the proper times of men so engaged.
>
> Fourth. To facilitate the making of apprenticeships to the sea service.
>
> Fifth. To perform such other duties relating to merchant seamen or merchant ships as are now or may hereafter be required by law."

Section 4612 gives the form of contract a seaman must sign, which also sets forth the kinds and quantity of food he shall receive, and the following particulars are required to be thereon, to-wit:

The birthplace, age, height, complexion, color of hair, wages, allotment, etc.

Section 4551 of the Revised Statues reads:

> "Upon the discharge of any seaman, or upon the payment of his wages, the master shall sign and give him a certificate of his discharge, specifying the period of his service and the time and place of his discharge, in the form marked Table B in the schedule attached to this Title;

> and every master who fails to sign and give to such seaman such certificate and discharge, shall for each offense, incur a penalty not exceeding fifty dollars. But whenever the master shall discharge his crew or any part thereof in any collection district where no shipping commissioner has been appointed, he may perform for himself the duties of such commissioner."

The certificate of discharge is a part of Section 4612, and upon such certificate of discharge there is required to be the following matters, to-wit:

> "Name and official number of ship, Port of registry, Tonnage, Description of voyage or employment, Name of Seaman, Place of Birth, Date of birth, Character, Declines to give statement of Character, Capacity, Date of entry, Date of discharge, Place of discharge."

To those matters which Congress has prescribed, defendants have added, date of birth, weight, the color of the eyes, his complexion, the total years of sea experience, his previous experience and employer, and the requirement that the photograph shall be attached thereto.

The Congressional scheme as to the discharge is that the Shipping Commissioner shall give the seaman a discharge, which of course the master of another vessel that the seaman seeks employment on may demand inspection of, the scheme of employment and discharge is complete.

However, defendants are undertaking to and do supply all of the seamen employed in interstate and foreign commerce on the Pacific Coast, in direct violation of the provisions of the Revised Statutes and

they are subject to the penalties of the following sections of the Revised Statutes in so doing, to-wit:

> 4514. "If any person shall be carried to sea, as one of the crew on board any vessel making a voyage as hereinbefore specified, without entering into an agreement with the master of said vessel in the form and manner, and at the place and time in such cases required, the vessel shall be held liable for each such offense to a penalty of not more than two hundred dollars. * * *"
>
> 4515. "If any master, mate or other officer of a vessel knowingly receives, or accepts, to be entered on board of any merchant vessel any seaman who has been *engaged or supplied* contrary to the provisions of this Title, the vessel on board of which such seaman shall be found, shall, for every such seaman, be liable to a penalty of not more than two hundred dollars."

These two sections make the supplying of seamen by the Shipping Commissioner *exclusive;* the language is as clear as it is possible to make it.

In

Loewe v. Lawlor, 208 U. S. 303-4,

this Court said:

> "It is curious to note the fact that in a large proportion of the cases in respect to interstate commerce brought to this court the question presented was of the validity of state legislation in its bearing upon interstate commerce, and the uniform course of decision has been to declare that it is not within the competency of a state to legislate in such a manner as to obstruct interstate commerce. *If a State*, with its recognized powers of sovereignty, is impotent to obstruct interstate commerce, *can it be that any mere voluntary association of individuals within the limits of that State has a power which the State itself does not possess.*"

The right of a man to work is identical with that of the trader to do business, and there are no cases to the contrary.

Page 293:

> "And that combination rests on many judgments of this court, to the effect that the act prohibits any combination whatever to secure action which essentially obstructs the free flow of commerce between the States, *or restricts, in that regard, the liberty of a trader to engage in business.*"

In

Thomsen v. Cayser, 243 U. S. 66,

this Court says on page 85:

> "The defendants were common carriers and it was their duty *to compete, not combine;* and their duty takes from them palliation, subjects them in a special sense to the policy of the law."

On page 87:

> "And it is established that the conduct of property embarked in the public service is subject to the policy of the law."

That was a steamship case where steamship companies had combined to fix freight rates.

In the case of *Wilson v. New,* 243 U. S. 332, in which case the Adamson Law, regulating wages, overtime, hours of labor, etc., on railroads came before the Supreme Court, the Court speaking of the powers of Congress on such subjects says on page 349:

> "Equally certain is it that the power has been exercised so as to deal not only with the carrier, but with its servants and to regulate the relation

of such servants not only with their employers but between themselves. * * *"

Page 364. Concurring opinion of Justice McKenna:

"I speak only of intention; of the power I have no doubt. When one enters into interstate commerce one enters into a service in which the public has an interest and subjects one's self to its behests. And this is no limitation of liberty; it is the consequence of liberty exercised, the obligation of his undertaking, and constrains no more than any contract constrains. The obligation of a contract is the law under which it is made and submission to regulation is the condition which attaches to one who enters into or accepts employment in a business in which the public has an interest."

Petitioner and those on whose behalf he sues have chosen the sea as a calling, other men have established ship-chandleries where ship outfits are sold, others operate tugboats to move vessels around, others have groceries and butcher shops that sell to none but vessels. Suppose these same defendants should establish a rule that each of the foregoing must register their names in their office and take their turn for a sale of goods or for the use of a tow-boat, that would be held a restraint on their right to do business; or supposing they should combine and tell all shippers they must register their names and take their turn as to vessels without any choice as to the vessel, that would be held to be a restraint.

The same rule must apply to persons, without whom vessels can not operate at all—their crews. If the

whole of the employers in a line of business can combine and make regulations to suit themselves, all can do it, and it would only be a question of time when all persons who work for others would be reduced to a condition of peonage.

Respondents in this case cannot complain about the regulations established by Congress.

In the case of *Patterson v. Bark Eudora*, 190 U. S. 169, the section prohibiting the payment of advance wages to seamen on foreign vessels, when such seamen were shipped in the United States, came before the Court and the question of the invasion of the liberty of contract was raised, just as defendants raise it in this case, and we respectfully quote the following language from that decision:

> "'From the earliest historical period the contract of the sailor has been treated as an exceptional one, and involving, to certain extent, the surrender of his personal liberty during the life of the contract. Indeed, the business of navigation could scarcely be carried on without some guaranty, beyond the ordinary civil remedies of contract, that the sailor will not desert the ship at a critical moment, or leave her at some place where seamen are impossible to be obtained—as Molloy forcibly expresses it, "to rot in her neglected brine". Such desertion might involve a long delay of the vessel while the master is seeking another crew, an abandonment of the voyage, and in some cases, the safety of the ship itself. *Hence the laws of nearly all maritime nations have made provisions for securing the personal attendance of the crew on board, and for their criminal punishment for desertion, or absence without leave during the life of the shipping articles.*

'If the necessities of the public justify the enforcement of a sailor's contract by exceptional means, justice requires that the rights of the sailor be in like manner protected. The story of the wrongs done to sailors in the larger ports, not merely of this nation but of the world, is an oft-told tale, and many have been the efforts to protect them against such wrongs. One of the most common means of doing these wrongs is the advancement of wages. Bad men lure them into haunts of vice, advance a little money to continue their dissipation, and, having thus acquired a partial control and by liquor dulled their faculties, place them on board the vessel just ready to sail and most ready to return the advances. When once on shipboard and the ship at sea the sailor is powerless and no relief is availing. It was in order to stop this evil, to protect the sailor, and not to restrict him of his liberty, that this statute was passed. And while in some cases it may operate harshly, no one can doubt that the best interests of seamen — a class are preserved by such legislation.

Neither do we think there is any trespass on the rights of the States. No question is before us as to the applicability of the statute to contracts of sailors for services wholly within the State.' "

PETITIONER HAD A RIGHT TO BRING A CLASS SUIT.

Equity Rule 38;

Betty v. Kurtz, 2 Peters 563, 583-4;

Callon v. Hope, 75 Fed. 758;

Duplex v. Deering, 254 U. S. 443;

Gieske v. Anderson, 77 Cal. 247;

Wheelock v. First Presbyterian Church, 119 Id. 477;

Florence v. Helms, 136 Id. 613.

THE EFFECT OF THE RULES AND REGULATIONS OF RESPONDENTS.

The taking of turns for employment, that is only obtaining employment by number, is destructive of competition not only as to the employee but also as to the employer, neither has any right of selection, and that would eventually lessen the standard of efficiency, as an inefficient workman would stand just as much chance of employment as a skilled one, and there would be no incentive to acquire skill.

The rules again say that no employment would be obtained by any one who failed to obey them; that is in effect a blacklist.

In the case of

Gompers v. Bucks Stove & Range Company,
221 U. S. 418,

this Court says:

> "In Loewe v. Lawlor, 208 U. S. 274, the statute was held to apply to any unlawful combination resulting in restraint of interstate commerce. In that case the damages sued for were occasioned by acts which among other things, did include the circulation of advertisements. But the principle advanced by the Court was general. It covered any illegal means by which interstate commerce is restrained, *whether by unlawful combinations of capital, or unlawful combinations of labor;* and we think also whether the restraint be occasioned *by* unlawful contracts, trusts, pooling arrangements, *blacklists,* boycotts, *coercion, threats, intimidation* and whether they be made effective, in whole or in part, by acts, words or printed matter."

The above being quoted from *In re Debs,* 158 U. S. 564.

The complaint clearly shows that defendants require a seaman to register and carry a book before he can obtain employment, and plaintiff alleges he cannot obtain work unless he does so. Such requirements are necessarily the obtaining of permission to work, the obtaining of permission from the whole body before he can work for one, and the whole body, irrespective of interference with interstate and foreign commerce, legally have no right to specify the requirements under which a seaman shall work for one of their members.

That the continuous discharge system can be used and has been used for blacklisting purposes is best evidenced by the fact that the Lake Carriers' Association had a similar system, a report on which is to be found in Pamphlet Whole Number 235, issued by the U. S. Department of Labor Bureau Statistics in 1918, under the title "Employment System of the Lake Carriers' Association". An investigation of the system was ordered by the Bureau and the conclusions of the investigator were as follows, pages 31 and 32 of said report and pamphlet:

> "This evidence of the continuing dissatisfaction of the sailors with their jobs on the Lakes, in addition to the evidence herewith submitted showing the existence of a system of practically compulsory registration and continuous-service records which actually operate as a black list, at the best, holds threats of the black list over the seamen, indicates pretty clearly that there is something radically wrong with the present system of labor employment on the Lakes. Many seamen are bitterly antagonistic to this 'welfare-plan' shipping system. This opposition is partly

> due to the fact that, apart from its merits or demerits, they feel that it is a system imposed upon them—a plan in the operation of which they have no part. They consider it undemocratic and feel that it seriously infringes upon their freedom of action and upon their right to organize among themselves for the betterment of the conditions upon which they work."

Matters became so serious on the Lakes owing to the discharge book system which was practically about the same as the book in this case as shown by the report, excepting that on the Lakes, the carriers always denied that seamen were compelled to go to their offices to get work, and in this case the appellees flatly say in effect he must go there or he cannot get work, and the complaint alleges he must go there; that finally the United States Shipping Board appointed ex-Governor Bass of New Hampshire to investigate, and upon the coming in of his investigation decided as follows, page 33 of Report:

> "Upon all the evidence received this board has decided that the discharge book is undesirable and should be abolished. It is believed, however, that certain features of the discharge book system are of value both to management of the shipping industry and to the men."

There is some evidence, or statement in the report that it was decided to continue it under government supervision. However, the law provides for the same thing in the certificate of discharge.

In the Report of the United States Shipping Board on Work, Wages and Industrial Relations during the

Period of the War, issued in 1919, we find the following on page 24:

> "After an investigation carried out in accordance with this promise the Shipping Board announced on November 21, 1917, that what had been known as the continuous discharge book should be abolished. In its place individual certificates of discharge might still be issued; but only special data could be given as would describe the seaman and the nature of his service, thereby eliminating the objectionable 'personal opinion' feature, or any other notation that might indicate a seaman's union activities. By this regulation it was hoped that the good features of the Lake Carriers' Welfare Plan might be saved, but that the possible use of its records as a 'blacklisting device' might be prevented. * * *
>
> With the opening of Lake navigation in the spring of 1918, it was found that the labor issues in that section were assuming a much more serious form. The Shipping Board was informed that the Lake Carriers' Association has substituted for the discharge book a 'certificate of membership', with a pocket in it, as a container for the individual discharge certificates, and that all the papers had as before to be produced and deposited at the time of employment. It was believed by the men that the new device could be made to serve exactly the same purpose as the old."

Page 26:

> "In an effort to ease this tense situation the Shipping Board had already taken up the discharge system, and during the months of June and July suggested and then directed that the discharge certificate should not be in book form or accompanied by a container, and that it should state on its face that it was the property of the man to whom it was issued. Nor was the holder of the certificate to be required to deposit it or

> produce it at the time of hiring. It was declared to be 'the intent of this finding that seamen should be employed solely with reference to their fitness for the work and not with reference to membership in Welfare Plan, nor with reference to affiliation with or activity in any union'."

We have already called the Court's attention to the fact, that the Shipping Commissioners' Act is copied from the British Merchant Shipping Act, the certificate of discharge is the discharge that has been used and under which the enormous British merchant fleet has been built up and operates, any innovations would seem to be clearly unnecessary, and the innovation in this case is a clear blacklisting scheme, and is unlawful as it restrains both the seamen from freely engaging in interstate and foreign commerce, and also the individual operator of a vessel who is a member of either of appellee organizations.

The language of appellees is:

> "and no person will be employed by these associations unless he is registered at their employment offices and has in his possession this Certificate and Discharge."

There is coercion, threats and intimidation in that language within the inhibition this Court has laid down in *Gompers v. Bucks Stove and Range Company*, above cited.

That the combination complained of herein is a combination in restraint of one of the instrumentalities of interstate and foreign commerce to freely engage therein cannot be questioned.

And no good reason can be shown why such instrumentality is not entitled to injunctive relief. Section 16 of the Clayton Act says "any person" may obtain such relief. To hold otherwise would be to put the rights of property above the rights of the man.

Supposing a seaman should accumulate sufficient in his calling to acquire a vessel and such vessel was restrained as the seamen are here, can it be possible that in the transition of the fruits of his labor over into a piece of observable property, rights attached to it that were not possessed while he was acquiring it? That a piece of property has a right superior to the individual? The right of both *acquiring* and *enjoying* property are generally conceded to be equal rights before the law.

EFFECT OF THE SHIPPING COMMISSIONERS' ACT.

There is nothing in the Shipping Commissioners' Act that compels any shipowner or master of a vessel to take any seaman the Shipping Commissioner may designate. It is simply a public employment office established to facilitate the operation of vessels, where a ship-master can go to look over the register of names and pick out those he may want, and find a crew where otherwise he might not be able to find one. England has built up her enormous merchant marine under the system, and again, the scheme is to protect both the seaman and commerce within the principles explained in *Patterson v. The Bark Eudora,* heretofore cited. Ships have run from the earliest periods

of history to the present without such rules and no necessity for them at this time appears.

The following are analogous sections of the law on the subject:

R. S. Sec. 4501:

> "The Secretary of Commerce shall appoint a commissioner for each port of entry, which is also a port of ocean navigation, and which, in his judgment, may require the same; such commissioner to be termed a shipping commissioner, and may from time to time, remove from office any such commissioner whom he may have reason to believe does not properly perform his duty. * * *"

British Merchant Shipping Act:

> "146. The Board of Trade may grant to such persons as it thinks fit licenses to engage or supply seamen or apprentices for merchant ships in the United Kingdom, to continue for such periods, to be upon such terms and to be revocable upon such conditions as such board thinks proper."

R. S. Sec. 4504:

> "Any person other than a commissioner under this Title who shall perform or attempt to perform, either directly or indirectly, the duties which are by this Title set forth as pertaining to a shipping commissioner, shall be liable to a penalty of not more than five hundred dollars. * * *"

British Merchant Shipping Act, Sec. 147:

> "(1) If any person not licensed as aforesaid, other than the owner or master or mate of the ship or some person who is bona fide the servant and in the constant employ of the owner, or a Shipping Master duly appointed as aforesaid, engages or supplies any seaman or apprentice to be entered on board any ship in the United Kingdom, he shall for each seaman or apprentice so

engaged or supplied, incur a penalty not exceeding twenty pounds."

The owner cannot even do as above under our law except in the trade between the United States and the British North American Possessions, or the West India Islands, or the Republic of Mexico under R. S. 4501.

What Congress intended to do is very clear, it turned the whole matter of the supplying, engaging and discharge of seamen over to the Shipping Commissioner, defined his duties in Section 4508 of the Revised Statutes, and then enacted Sub. (3) of Section 147 of the British Merchant Shipping Act as Section 4515 of the Revised Statutes, imposing a penalty of two hundred dollars for the receipt of each seaman on board contrary to the provisions of the Shipping Commissioner's Act.

Dated, San Francisco,
February 18, 1926.

H. W. HUTTON,
Attorney for Petitioner.